Supreme Court, U.S.
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No. 93-1202

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

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ALLEN N. BRUNWASSER,

Petitioner

vs.

JOHN E. STEINER,

Respondent.

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# BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE SUPERIOR COURT OF PENNSYLVANIA AND THE SUPREME COURT OF PENNSYLVANIA

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John E. Steiner,
Respondent

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16 pp

## COUNTER STATEMENT OF QUESTION PRESENTED

THERE IS NO LEGITIMATE FEDERAL QUESTION PRESENTED.

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## STATEMENT OF THE CASE

It is difficult to begin because of the long tortured history preceding the case which has been brought to this court for review. It is also impossible to identify an issue of constitutional dimension arising from this case or any matters relevant to this Court.

An explanation of the appendix (by Petitioner) will be helpful to this court:

Appendix, Page 8, the Opinion of the Honorable Anthony J. Martin. The matter before Judge Martin was an action at law for money damages and ejectment. As may be seen, the decision was in the form of a decree in equity. Pennsylvania law distinguishes between actions in law and those in equity (Pa. R.C.P. 1001 and 1501). Moreover, Pennsylvania law provides

for an adjudication in equity (Pa. R.C.P. 1517) to be in the form of (1) a statement of the issues, (2) a statement of findings of fact necessary to support the conclusions, (3) a discussion of the legal questions and (4) a decree nisi. Following the decree nisi, post trial procedures are allowed. (Pa. R.C.P. 227.1) Judge Martin's decision did not follow the required procedures.

Even prior to the trial before Judge Martin, the Plaintiff, Steiner, had moved for judgment on the pleadings and for summary judgment on several occasions. The motions were never addressed.

Appendix, Page 19, the Opinion of Judge Friedman. In Hera v. McCormick, Pa. Super. 625 A.2d 682, 687 (1993), the Pennsylvania Superior Court affirmed that one seeking to introduce a document must comply with the best evidence rule. Here,

the Petitioner did not even approach the requirements (a review of the Answer filed by the Petitioner will disclose), and as held by the Superior Court, the Petitioner pleaded a "lease ending March 31, 1994, if he determines to rely on said lease"[1]. More importantly, Judge Friedman failed to address any of the issues raised in Steiner's post trial motions. In fact, one of Steiner's grounds for appeal was that Judge Friedman did not read the transcript and pleadings. If she had, she would have recognized that Petitioner never averred the existence of a written lease (a requirement under the Pennsylvania statute

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[1] Pennsylvania is a fact pleading state and its Rules require that if claims or defenses are based upon a writing, it must be attached to the pleading. By not pleading the lease, Petitioner did not attach it, thus preventing the defenses available under the statute of frauds. In essence, Petitioner tried to litigate by a trick.

of frauds) and never exercised the purported option under the non existent lease.

Petitioner's refusal (it was not a technical failure, because it was intentional) to allege the existence of a written lease was sufficient grounds to have dismissed the action at the outset. The only injustice is that Steiner had to wait five (5) years to obtain possession of his property.

Appendix, Page 31, Judge Friedman's order denying counsel fees. It was ridiculous to suggest that the claim had been either decided by Judge Martin or abandoned. Fortunately, the Superior Court recognized that Steiner never abandoned his request. And the fees were properly assessed.

Appendix, Page 35, the Supplemental Opinion by Judge Friedman. Here, she

acknowledges that Steiner viewed her decision as an abandonment of judicial responsibility.

Appendix, Page 39, the Order denying the Motion to Quash. This was Petitioner's motion, based on Steiner's failure to reproduce the entire record. The contents of the record on appeal are governed by Pennsylvania Rules of Appellate Procedure, 2152, et seq. Petitioner, in violation of those rules demanded that the entire record be reproduced. It was a meaningless record filled with unnecessary papers by Petitioner. The trial itself, for possession of a residential condominium unit took five (5) days, an ungodly time, again, because of the Petitioner's rambling. The only reason for demanding the entire record, in light of the Pennsylvania Appellate Rules was to burden Steiner with more cost.

Appendix, Page 44, the Opinion of the Superior Court. This was simply a finding that the lower court erred in not granting judgment on the pleadings or summary judgment.

Following the Superior Court decision are a plethora of orders, some of which reflect the Superior Court's retaking jurisdiction to require the trial judges to follow its earlier holding and some of which deny Petitioner's additional motions, too numerous to list. The orders prohibiting further filings were due to Petitioner's constant filing of motions without any apparent purpose except to retain the record in the appellate courts to prevent the Sheriff from executing on the final order for possession and money.

As of this date Petitioner is out of Unit 19D.

## ARGUMENT AND SUMMARY OF ARGUMENT

This should have been a simple action for ejectment and for rent due. Steiner purchased Unit 19D, a condominium in a building known as Gateway Towers. At the time of the purchase, Steiner also obtained an assignment of all of the Seller's rights to rent from the Petitioner, who had lived in the unit since about 1963, and since 1978 without paying rent. Upon purchase, Steiner sought to have Petitioner ejected. That is all there is to this case. A review of the facts will indicate that Petitioner not only had no right to possession, but abused legal processes to remain as long as he could without paying rent. Finding a constitutional dimension to this case is impossible.

While Petitioner accuses this counsel of ad hominem attacks on him, Steiner's Motion for Reconsideration as to Certain Issues Raised on Appeal (page 12 of Petitioner's brief), outline the intimidating methods of the Petitioner and explain Steiner's concern for a fair trial. As evidenced by the record, that did not occur. It took the appellate courts years to provide Steiner with the relief to which he was entitled.

A recitation of the facts in response to Petitioner's statement would be a disservice. The record is void as to any support for the allegations made. More to the point, even if he had had a lease, the nonpayment of rent would have justified the relief sought.

In the meantime, John E. Steiner was denied the use of the condominium he purchased since 1988 and has not even

received one dollar of rent for it.

The long and short of this case is that it reflects a lawyer's abuses of the legal process over a period of over fifteen (15) years to obtain free rent. Petitioner has placed a bond in the form of cash equivalents, in an amount of approximately $250,000. Yet, his claim is he owes no rent on the premises in which he resided for fifteen (15) years because they are "uninhabitable." It should not have taken the court five (5) years to decide that issue. Unfortunately, Petitioner is doing what he said he would do at the outset of this litigation, "take John Steiner's economic hide."

The issues that Petitioner seeks to bring before this court are issues arising out of numerous filings that he made to the Superior Court and the Supreme Court after having lost the case, none of which

affected the finality of the Orders referenced. All other orders related to enforcement of the earlier decisions. Petitioner did everything he could to avoid moving out of Unit 19D and never paid any rent.

In fact, hidden in his brief is reference to Pa. R.A.P. 2572, referencing the time for remanding the record. Petitioner had convinced the Allegheny County Sheriff that execution on the order of ejectment could not be issued so long as the record was held in the appellate courts. Thus, he filed motion after motion, including a now remanded Petition for Removal to the United States District Court for the Western District of Pennsylvania, filed under Civil Action No. 93-1934, to continue to delay the eventual eviction. This Petition was for the very same purpose, as evidenced in filings

before the Pennsylvania Supreme Court, and for that reason, no further filings were permitted.[2]

To go through the litany that has been raised in the Petition, is to further abuse the process that brought us before this court in the first place. This case has no constitutional dimension whatsoever. Petitioner had, as he acknowledges, a "long" trial before a lower court. The record of that proceeding was before the Superior Court. One reviewing that record need go no further to determine that Petitioner has abused the legal process at its every turn.

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[2] Interestingly, the prohibition against filing of meritless papers by a litigious was recently approved in a matter before the Second Circuit in In Re Martin V. Trigona, 9 F.3d 226(CA 2, 1993).

## CONCLUSION

WHEREFORE, it is prayed that this Honorable Court reject the Petition for Writ of Certiorari. A Motion pursuant to Rule 42.2 will be submitted following rejection of this Petition.

Respectfully submitted,

NERNBERG & COONEY

By: _____
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Attorneys for Respondent